

(2007) 10 GAU CK 0054
In the Gauhati High Court

Bakul Debnath and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Arms Act, 1959 — Section 27
Civil Procedure Code, 1908 (CPC) — Section 115, 24, 25
Constitution of India, 1950 — Article 136, 226, 227, 228, 395
Government of India Act, 1935 — Section 223, 224, 225
Motor Vehicles Act, 1988 — Section 103, 115, 12, 14, 140
Penal Code, 1860 (IPC) — Section 115, 140, 148, 149, 302

Citation : (2007) 4 GLT 813

Hon'ble Judges : U.B. Saha, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.B. Saha, J.—These writ appeals are directed against the common judgment and order dated 06.07.2000 passed by the learned single Judge of this Court in WP (C) No. 235 of 2000.

2. Heard Mr. Soumik Deb, learned Counsel for the appellants/claimants and also heard Mr. P. Goutam and Mr. K. Bhattacharjee, learned Counsel appearing for the respondent-writ petitioners, Oriental Insurance Company, in the aforesaid two writ appeals respectively.

3. At the outset, the learned Counsel for the writ petitioners/respondents submits that the only question involved in this matter which requires to be answered by us is as to whether an LPA/writ appeal preferred against the judgment and order of a learned single judge passed under Article 227 of the Constitution setting aside the award of compensation passed by the learned Motor Accident Claims Tribunal (for short, "MACT") having no jurisdiction, completely perverse, nullity and also contrary to the prescription by the MV Act, is maintainable or not; and/or whether an award of compensation passed u/s 140 of the Act by the learned tribunal which is not being arisen out of use of

motor vehicle, as required u/s 140 of the Act, quashed by the impugned judgment and order of the learned single judge of the High Court in exercise of supervisory power under Article 227, is called for our interference or not.

4. Since these writ appeals involve common question of law and facts and as agreed to by both the parties, we propose to dispose of both the appeals/LPAs together finally by the following common judgment and order.

5. The appellant Nos. 1 and 2 in WA No. 66 of 2000 and appellant No. 1 in WA No. 67 of 2000 filed their respective Claim Petitions before the learned Motor Accident Claims Tribunal (for short, "the Tribunal"), Agartala u/s 166 of the Motor Vehicles Act, 1998 (for short, "the Act") claiming compensation of Rs. 17 lakhs 50 thousand and Rs. 55 lakhs 70 thousand respectively, along with applications u/s 140 of the Act, for grant of compensation to the tune of Rs. 50,000/- against each of the applicants for the death of Milan Debnath, husband and son of the appellants in WANO. 66 of 2000 and Binanda Sarkar, husband of the appellant in WA No. 67 of 2000, arising out of vehicular accident which took place on 19.10.1997 while they were travelling from Jampajala to Agartala by a Bus bearing registration No. TRS-48S without Police escort, when it reached Kanurampara, under Takarjala Police Station, a gang of armed unknown extremists stopped the bus and kidnapped some passengers therefrom including the deceased persons, whose dead bodies were recovered on 30.10.1997 for which a criminal case was instituted being Takarjala Police Station Case No. 53 of 1997 u/s 148/149/304/ 307/364, IPC and 27 Arms Act. In the claim petition, it is also stated that the accident took place because of the negligent driving of the vehicle of the owner, opposite-party. The application of the appellants in WANO. 66 of 2000 before learned Motor Accident Claims Tribunal, Agartala (for short "the Claims Tribunal") for the compensation of Rs. 50,000/- was registered as Case No. Misc. (MAC) 1 of 1999 and the application filed by appellant in WA No. 67 of 2000 for grant of compensation to the tune of Rs. 50,000/- was registered being Misc. (MAC) No. 2 of 1999.

6. The learned Tribunal awarded compensation to the tune of Rs. 50,000/- each of the aforesaid appellants u/s 140 of the Act. The aforesaid applications u/s 140 of the Act, were resisted by respondent No. 1/writ petitioner, Oriental Insurance Company (for short, "the Insurance Company") by way of filing written objections, by contending inter alia, that the claims/appeals were not maintainable as the deceased persons, namely Milan Debnath and Binanda Sarkar, died not because of motor accident and hence the claim for compensation was not permissible under the law.

7. The learned Tribunal, after hearing the parties, passed an award of Rs. 50,000/- each in both the claim petitions u/s 140 of the Act as no fault liability vide order dated 28.8.1999. Being aggrieved by the aforesaid order dated 28.8.1999, the Insurance Company filed two separate writ petitions under Article 227 of the Constitution of India for setting aside and/or for quashing the order dated 28.8.1999 in exercise of supervisory power vested on High Court.

8. Before dealing with the submission of the learned Counsel for the parties, we may state that the writ petitioner/respondent, Insurance company, challenged the award on the ground that the learned Tribunal had no jurisdiction to decide the claim petitions filed by the claimant/appellants as the death of Mr. Milan Debnath and Mr. Binanda Sarkar were not the result of vehicular accident but they were murdered by the extremists after kidnapping from the Bus in which they were travelling towards Agartala. The learned single Judge of this Court, after hearing the parties, allowed the writ petitions filed by the Insurance company and set aside the order dated 28.8.1999 passed by the learned tribunal. Dissatisfied with the aforesaid judgment and order of the learned single Judge, the appellants preferred the instant appeals.

9. The learned Counsel for the writ petitioner/respondent, Insurance company, raised objection as to the maintainability of the appeals and according to him, the learned single Judge exercised his jurisdiction under Article 227 and set aside the award passed by the learned Tribunal and that being the position, according to the decisions of the Apex Court no writ appeal/LPS is maintainable against the said order and remedy, if any, can be sought for before the Supreme Court by way of filing appeal under Article 136.

10. On the question of maintainability of these appeals, Mr. Soumik Deb, learned Counsel for the appellant canvases the following three points:

(i) Firstly, the award/order passed by the MACT cannot be subject to scrutiny by the High Court under Article 226 and Article 227 of the Constitution or both. In support of his aforesaid contention he relied on the decisions of the Apex Court in (1) Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , (2) Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, (3) National Insurance Co. Ltd. Vs. Swaran Singh and Others, (particularly para 38), (4) State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, (para 13 and 17) respectively.

(ii) Secondly, in respect of an award passed by the Motor Accident Claims Tribunal at the instance of the insurer, the door of High Court under Article 227 is fully closed, he relied upon the decision of the Apex Court in the cases of (1) Rapti Commission Agency Vs. State of U.P. and Others, , (particularly para 7), and submitted that the High Court cannot comment upon the correctness of the judgments of the Apex Court in the cases of Sadhna Lodh (supra) and Binoy Kumar Dugar (supra).

(iii) The third point is that Court has to reach to a conclusion after taking into account of the facts and reliefs prayed for in the writ petition and the judgment delivered by the learned single Judge as to whether the writ petition is filed under Articles 226/227 of the Constitution, has to be looked into only after examining the facts narrated in the writ petition. In support of the said point No. 3 he referred to the cases of (1) M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, (2) Sushilabai Lakshminarayan Mudliyar and Ors. v. Nihalchand Waghajibhai Shaha and Ors. 1993 Supp. (1) SCC 11, (3) Mangalbai and Ors. v.

Dr. Radhashyam, s/o Parischandra Agarwal (1992) 3 SCC 48, (4) Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others, (5) Subal Paul Vs. Malina Paul and Another, (6) Kishorilal v. Sales Officer, District Land Development Bank and Ors. (2006) 7 SCC 496.

11. Mr. Soumik Deb, further contended, even if for argument's sake, that it is considered that the Tribunal passed the award u/s 140 of the MV Act without jurisdiction, then also the said award cannot be corrected by a Court having no jurisdiction like the writ court, which the learned single Judge did in the instant case, for which itself the judgment of the learned single Judge is liable to be set aside. According to him, if the Tribunal exercised its jurisdiction illegally, then only the remedy is before the Apex Court and not before the High Court. He also argued that unless the right to LPA/Writ appeal is specifically excluded by a statute, that will always remain to be rectified before a Court of appeal. And in the instant case, the right to appeal/LPA is not specifically excluded by any of the provisions of law; hence the writ appeal is maintainable. According to him the petitions filed by the respondent/writ petitioners is not actually under Article 227 but under Article 226 and, as such the same is appealable.

12. Mr. P. Goutam, learned Counsel appearing for the respondent, Insurance Company, on the other hand, while raising the question of non maintainability of the writ appeal, urges that it has been settled by this time that when a court or tribunal passed an award without having jurisdiction and when the alleged claim is not the subject matter, which can be decided under a statute and that statute also does not prescribe any provision either for appeal or for revision or for any other remedy, then the affected party has the right to approach the constitutional court to exercise its plenary power under Article 226 and 227. The said power of the constitutional Court cannot be taken away by any authority except the Parliament by way of amendment of the provisions of Constitution. According to him, in the instant case, the insurance company/writ petitioner challenged the award of the learned tribunal as passed by it u/s 140 of the Act even though the alleged accident was not occurred due to use of motor vehicle insured to the respondent Insurance Company, and prima facie when it is evident from the claim petition itself that the husband and son of the appellant Nos. 1 and 2 in WA No. 66 of 2000 and husband of appellant No. 1 in WA No. 67 of 2000 were murdered by the unknown extremists while they were moving towards Agartala by the insured Bus by way of kidnapping them from the place of occurrence for which a criminal case had already been registered, the tribunal passed the award without any jurisdiction contrary to all provisions of the MV Act and while the same is perverse and/or nullity in the eye of law for which no remedy is available under the MV Act, the Insurance Company/ the Insurer has the right to approach the writ court preferring a writ petition under Article 226 and 227 and, therefore, respondent writ petitioner being aggrieved by the award in question passed by the tribunal filed the writ petition under Article 227 before the learned single Judge of this Court for setting aside and quashing of the said award and learned single Judge rightly set aside the award passed by the learned

tribunal as the same was passed without jurisdiction and beyond the scope of the MV Act. The death of the husband and the son of the claimant/appellant Nos. 1 and 2 respectively in WA No. 66 of 2000 and husband of appellant No. 1 in WA No. 67 of 2000 had not been resulted from an accident arising out of the use of a motor vehicle.

13. His next submission is that the present appellant has no right to prefer any appeal against the said judgment and order of the learned single Judge under Article 227 of the Constitution as the same is not appealable in view of the decisions of the Apex Court and this High Court. He also submits that it is also settled by this time that if an order is passed by a learned single Judge of the High Court on a petition filed under Article 226 and 227 or both, then an LPA/writ appeal lies but if on a petition filed under Article 227 alone, and the judgment and order is passed therein by a single Judge exercising his jurisdiction under the said Article 227 then no LPA/writ appeal shall lie before the High Court, the remedy against the judgment of learned single Judge is only before the Supreme Court, under the provisions of the Constitution. The instant LPA/WA filed by the appellants against the impugned judgment and order of the learned single Judge of this Court under Article 227 is not maintainable. Hence on this ground alone the writ appeals are liable to be dismissed. In support of his aforesaid contention he referred the decision of the Apex Court in the case of Umaji Keshao Meshram and Ors. v. Dadhikabai and Anr. 1986 SCC 401 and decision of this Court in the case of Shivaji Saha v. Shah Md. Farid 2005 (1) GLT 289 : (2005) 2 GLR 435 and judgment and order dated 24.8.2006 passed by a Division Bench of this Court in WA No. 01 of 2001 (Smt. Nirmala Debnath and Ors. v. New India Assurance Ltd. and Ors. (2006) 3 GLT 660.

14. Reacting to the submission of learned Counsel Mr. Deb, Mr. Goutam, submits that the case of Sadhna Lodh (supra) and Bijoy Kumar Dugar (supra) has not closed the door of the High Court from preferring a writ petition/revision petition under Article 227 of the Constitution against an award passed by the learned tribunal in a motor accident claim petition while he has no jurisdiction to decide the same u/s 140/166 of the Act. Reiterating his earlier submission that the power of the High Court as vested on it under Article 226/227 is not totally barred and door of the High Court is not totally closed for the insurer to approach it, he contended that their lordships of the Supreme Court in the case of Sadhna Lodh (supra) and Bijoy Kumar Dugar (supra) nowhere stated that if the award passed by the tribunal is a complete perversity or a nullity in the eyes of law or that either the tribunal had no jurisdiction in passing the award or the award has been passed on the grounds and for reasons or a provision in common law cannot stand on the way of judicial scrutiny. In support of his aforesaid contention he refers a full bench decision of High Court of Himachal Pradesh, in the case of National Insurance Co. Ltd. Vs. Soma Devi and Others, and a decision of this Court in the case of Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others, And also a decision of the High Court of Judicature at Madras in the case of Kanniyamal and Ors. v. P. Narayanan and Anr. 1989 ACJ 151 relying the

ratio of the decisions of the Supreme Court in *Bhagawati Devi v. I.S. Goel* 1983 ACJ 123, held that motor accident claims tribunal is a civil court subordinate to the High Court for the purpose of Section 24 of the CPC and power of the High Court conferred under 226 of the Constitution of India has not been taken away or curtailed by the provisions of the MV Act which fixes the territorial jurisdiction of the tribunal constituted thereunder and a constitutional provisions cannot be defeated by ordinary legislation enacted by the Parliament. He further urges that the alleged bus in which the deceased relations of the appellants in both the writ appeals were moving to Agartala is an insured one by a particular insurance policy and as such covers the risk arising out of using of motor vehicle but risk of death committed by insurgent/terrorist i.e. a murder simplicitor is not covered and in the instant case, admittedly the deceased, relations of the appellants, were kidnapped by the insurgents/terrorists from the alleged insured bus and thereafter they were murdered which is an offence covered by provisions of Section 302 of the IPC and for which a criminal case has already been covered and is under investigation. Same being the position, the learned tribunal ought not have awarded any amount of compensation u/s 140 of the Act. In support of his aforesaid contention he relies the decision of the Apex Court in the case of *Murlidhar Sarangi v. The New India Assurance Co. Ltd.* AIR 2000 SCW 694.

15. In para Nos. 6 and 7, in the case of *Sadhna Lodh* (supra), the Apex Court stated, inter alia, that the right to appeal is statutory right and whether the law provides remedy by filing an appeal on limited grounds, such grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premises that the insurer has limited grounds available for challenging the award given by the tribunal. It is also held that "where remedy for filing a revision before the High Court u/s 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. The Apex Court further held that, the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. For better appreciation, the said paragraph Nos. 6 and 7 are reproduced hereunder:

6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149 of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149 of the Act (see *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, . This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition

under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision u/s 115 CPC in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court u/s 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

(Emphasis supplied)

7. The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

16. In the case of Bijoy Kumar Dugar (supra) the Apex Court, following the decision of Sadhna Lodh (supra) dealing with the provisions of Sections 173 and 149 of the Act and provisions of Articles 226 and 227 of the Constitution and also Section 115 of the CPC, 1908 held that since the insurer has a remedy by filing an appeal before the High Court on the available defences envisaged under the statute, writ petition under Articles 226/227 of the Constitution by an insurer challenging the award of MACT is not maintainable. In para 38, in the case of Swaran Singh (supra), as relied by Mr. Deb, the Apex Court held that "This Court in Nicolletta Rohtagi which has since been followed in Sadhana Lodh v. National Insurance Co. Ltd. in no uncertain terms held that the defence available to an insurance company would be a limited one.

Mr. Deb, also relied upon para Nos. 7 and 13 in the case of Om Prakash Sharma (supra) which is quoted hereunder for better appreciation.

7. An intra-court appeal preferred by the appellant herein there against was dismissed by a Division Bench stating;

The learned Single Judge while relying upon the judgment of the Supreme Court

in *Sadhana Lodh v. National Insurance Co. Ltd.* found that it was not a fit case to exercise jurisdiction under Article 227 of the Constitution of India.

We do not find any error or illegality in the impugned order passed by the learned single Judge. The Labour Court by its award dated 13.9.1999 set aside the oral order of the appellant terminating the services of the respondent workman as the appellant failed to publish the seniority list of workmen in accordance with Rule 77 of the Industrial Disputes (Central) Rules.

Accordingly, the appeal fails and is hereby dismissed.

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13. In *Sadhana Lodh v. National Insurance Co. Ltd.* the issue which came for consideration before this Court was as to whether in the face of the provision for an appeal, the High Court could exercise its power of judicial review. It was held that when in an appeal power is vested in the High Court, ordinarily the writ jurisdiction could not be taken recourse to. Even in such a case, the Court was held to have limited jurisdiction.

(Emphasis supplied)

17. In *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, , considering the case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, the Apex Court overruled the contention inter alia that Section 12 of the Bombay Taluqdari Tenure Abolition Act (62 of 1949) makes the decision of the Tribunal final and conclusive and High Court cannot interfere while propounding all pervasive authority of the High Court under Article 227 of the Constitution. The Supreme Court went so far to interfere with the revisional order of the tribunal, which refused to revise the appellate order of the Additional Collector and the decision of the Tahsil. So, in view of the decision in *Vakht Singhji (supra)* the High Court in exercise of its supervisory jurisdiction under Article 227 cannot only annul the decision of the Tribunal, but can also issue further direction in the matter and the authority under said Article knows no bound, self restraint is the only limitation as the same is vested on High Court with top priority for administering justice to the citizen by way of exercising its supervisory power and superintendence as well as on subordinate Court including Tribunal. For proper appreciation relevant portion of para 14 of the *Vakht Singhji (supra)* is reproduced hereunder:

14. Mr. Bindra submitted that Section 12 of the abolition Act makes the decision of the Tribunal final and conclusive and the High Court had no jurisdiction to interfere with this decision, particularly in respect of solatium of 15 per centum and non irrigational bunds, tanks and wells. We are unable to accept this contention. Article 227 of the Constitution gives the High Court the power of superintendence over all Courts and Tribunal throughout the territories in relation to which it exercises jurisdiction. The jurisdiction cannot be limited or fettered by any act of the State legislature. The supervisory jurisdiction extends to keeping

the subordinate Tribunals within the limits of their authority and to seeing that they obey the law. It was the duty of the revenue Tribunal to award compensation to the Taluqdars in accordance with the provisions of Sections 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the Tribunal where the Tribunal on a misreading of the provision of Sections 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light it does not appear that the High Court exceeded its jurisdiction under Article 227 in revising the decision of the Tribunal in respect of the solatium and irrigational bunds, tanks and wells. Numerous cases were pending before the Revenue Tribunal in respect of compensation payable to the Taluqdars under the Bombay Taluqdari Tenure Abolition Act. To prevent miscarriage of justice it was necessary for the High Court to lay down general principles on which compensation should be assessed so that the Tribunal may act within the limits of their authority. On finding that the Tribunal had misconceived its duties under Sections 7 and 14, the High Court could not only set aside its decision, but also direct it to make further inquiries after taking evidence. As pointed out in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, the High Court in the exercise of its supervisory jurisdiction under Article 227 cannot only annul the decision of the Tribunal but can also issue further direction in the matter.

18. The scope of judicial review under Article 227 of the Constitution has been very carefully laid down in *Jagdishlal Dhody Vs. State of Madhya Pradesh and Others*, In the case of *Ved Parkash Sawhney Vs. R.A. Wania and Another*, their lordships of the Delhi High Court held where the cause of justice is seriously jeopardized, the exercise of power under Article 227 may take shape of constitutional obligation.

19. In paragraph 84 in the case of *Umaji (supra)* held as under:

84. A question may well be asked why it was thought necessary to incorporate in the Constitution the jurisdiction and powers conferred by Articles 226, 227 and 228. The answer is obvious. Provisions similar to Articles 227 and 228 already existed in a Constitution Act, namely, in Sections 224 and 225 of the Government of India Act, 1935. The said Sections 224 and 225 were not made subject to the provisions of Part IX of the said Act and of any Order in Council made under the said Act or any other Act or to the provisions of any of the appropriate Legislature as the jurisdiction of the existing High Courts was by Section 223 of the said Act. These sections could, therefore, have been amended only by a legislation made by the British Parliament by amending the Government of India Act, 1935. The Govt. of India Act, 1935 repealed by Article 395 of the Constitution. It was, therefore, necessary to re-enact these provisions and the only way in which it could be done was to insert them in the Constitution because were these powers to be treated on the footing as the other powers and jurisdiction of the existing High Courts, they would have become subject to laws made by the appropriate legislature. So far as Article 226 is concerned, the power to issue prerogative writs was possessed by the three Chartered "High

Courts" only. As the Constitution makers intended to confer the enlarged power under Article 226 upon all High Courts and not merely the three chartered High Courts this power had to be embodied in an Article of the Constitution. It should also be borne in mind that the jurisdiction under Articles 226, 227 and 228 was intended to be conferred upon all High Courts: not only the existing High Court but also any other High Court as and when it came to be established in the future. Further, the insertion of Articles 226, 227 and 228 in the Constitution without making them subject to any law to be made by the appropriate legislature put these Articles beyond the legislative reach of the Parliament and the State legislature with the result that the jurisdiction conferred by these Articles can only be curtailed or excluded with respect to any matter by a Constitutional amendment and not by ordinary legislation.

20. In *Umaji* (supra) the Apex Court also held that if the judgment appealed against is under Article 226 of the Constitution, the same is maintainable; but if the judgment appealed against is under Article 227, the same is barred and if the judgment appealed against is both under Articles 226 and 227, then that has to be treated as one under Article 226 so that the appellant may not be deprived of his valuable right of appeal, which would be evident from paragraph 100 of *Umaji* (supra). For better appreciation, we like to reproduce the paragraph 100 of the said judgment as under:

100. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate Court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate Court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Court as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see *Mahomedalli Allabux Vs. Ismailji Abdulali*, , *Raghunath Keshav Khadilkar Vs. Poona Municipality and Another*, , Ryots of AIR 1943 164 (Privy Council) and *Moulvi Hamid Hasan Nomani v. Banwarilal Roy* (1946-47)74 IndApp 120, 130-31 : AIR 1947 PC 90, 98). In the last mentioned case, which dealt with the nature of a writ of quo warranto, the Judicial Committee held:

In their Lordships" opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactment falls within the description of ordinary original civil jurisdiction.

By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High

Courts. A series of decisions of this Court has firmly established that a proceeding under Article 226 is an original proceeding and when it concerns civil right, it is an original civil proceeding (see, for instance, *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, , *Arbind Kumar Singh Vs. Nand Kishore Prasad and Others*, and *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*,

21. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, also, their Lordships of the Supreme Court held that "power of superintendence was conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters, which are to be found in certiorari jurisdiction. Not only that their Lordships of the Apex Court in the aforesaid case also discussed the difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227. To see the difference between Articles 226 and 227 it can be noticed how the power of supervisory jurisdiction has to be exercised by the High Court, which are discussed in paragraphs 24, 25 and 38. The aforesaid paragraphs of the said *Surya Dev* (supra) are quoted hereunder:

24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram v. Radhikabai*. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only inappropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdiction stands almost obliterated in practice. Probably, this is the reason why

it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the board general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such direction as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to manner in which it would not proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

38.(1) *** ***(2) *** ***(3) *** ***(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has

assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

22. After the decision of *Sadhana Lodh* (supra) the question again came up before the Full Bench of the High Court of Himachal Pradesh in the case of *National Insurance Co. Ltd.* (supra) was whether writ petition filed under Articles 226/227 of the Constitution of India by an Insurance Company against an award passed by the MACT, in which the insurer-petitioner filed award only on the issue of quantum of compensation is maintainable or not, after calling out various decisions of the High Court and the Supreme Court and after considering the case of *Sadhana Lodh* (supra) wherein the Apex Court considering the case of *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, held that appeal is a statutory right and where the law provides by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Considering the aforesaid decision of the Apex Court High Court of Himachal Pradesh in *National Insurance Co.* (supra) held that an Insurance Company can challenge the quantum of compensation awarded by the MACT in a petition under Articles 226 and 227 of the Constitution where the order/award passed by a Tribunal is full of perversity is perverted or is based on fraud or nullity in the eye of law or that the Tribunal has no jurisdiction in passing the award or taken stand of judicial review. Paragraphs 11, 12 and 13 from the decision of the High Court of Himachal Pradesh in *National Insurance Co. Ltd.* (supra) are, therefore quoted herein below:

11. Their Lordships of the Apex Court, therefore, have clearly and categorically held and decided that for whatever reasons the grounds of challenge with respect to an award cannot be enlarged by an insurer by filing a petition under Articles 226/227 of the Constitution on the premise that insurer having limited grounds available to it u/s 173 of the Act, it is therefore permissible for it by invoking the extra-ordinary jurisdiction of the High Court to extend or enlarge the grounds by taking recourse to the remedy of filing a petition under Articles 226/227 of the Constitution. This has been held impermissible.

12. The aforesaid proposition of law thus sets at rest any controversy, or doubt about the maintainability of any such petition under Articles 226 or 227 of the Constitution and, therefore, the Division Bench judgment of this Court in *United India Insurance Co. Ltd. Vs. Sumitra Devi and Others*, taking a view contrary to the aforesaid view of the Apex Court, is hereby overruled. The overruling of the judgment in *Sumitra Devi*, or for that matter reliance placed by us (in doing so) upon the ratio in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, does not and cannot mean that, apart from an award based on any

question relating to the quantum of compensation not being liable to be challenged by an insurer in a petition filed under Articles 226/227 of the Constitution of India, the doors of this Court are always completely shut to a person, including an insurer, in invoking this Court's extraordinary jurisdiction under Articles 226/227 of the Constitution where such a person, including an insurer satisfies this Court that the award is a complete perversity, or a nullity in the eyes of law, or that either the Tribunal has had no jurisdiction in passing the award, or the award has been passed on grounds and for reason which, on the touchstone of any constitutional or legal provision or even a provision in common-law, cannot stand judicial scrutiny. For instance, where an insurer approaches this Court by filing a petition under Articles 226/227 of Constitution of India assailing an award of the Tribunal on the ground that, contrary to all principles as are found in the law of Torts or those relating to fixing tortious liability, the claimant has no cause to prefer any claim at all, or that there was no wrong done by any one, nor the least by the insurer respondent, as far as the alleged causing of the alleged injuries or for that matter even the factum of the accident was concerned. For instance in a case like C.W.P. No. 679 of 2000 (which is one of the cases referred to the Full Bench for consideration) where a truck driver while driving a truck died by cause of a mishap not attributed to any one else, and despite admitted case of the legal heirs of the deceased truck driver that the accident did not occur on account of any rashness or negligence of anyone (because no other vehicle or no other person was involved in the causing of this mishap the claim petition was nonetheless filed by the legal heirs of the deceased truck driver against the insurer respondent (and the insurer of the truck alone was made sole respondent in the claim petition, and despite the insurer respondent raising objection as to the maintainability of the claim petition and the Tribunal had actually framed an issue to that effect award was nonetheless passed against the insurer.

13. In such like cases, where the award in the face of it being perverse, and scope, review and operation of Section 173 of the Motor Vehicles Act being what it is totally restrictive), the only remedy available to an insurer naturally would be to challenge the award by approaching this Court by invoking this Court's extraordinary jurisdiction under Articles 226/227 of the Constitution because the power of judicial review vesting in this Court in such like cases cannot be abdicated and should not be considered obliterated and hence it would become the duty of this Court to exercise this power.

23. The decision of the Full Bench of the High Court of Himachal Pradesh is also followed by this Court in Regina (supra).

24. In the case of Baby Vs. Travancore Devaswom Board and Others, the Apex Court held that powers of High Court under Article 227 are in addition to powers of revision under other legislation and in The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, the Apex Court, further, held that even the High Court has the powers to inquire into the merit to

find out whether an ex parte interim order of a Tribunal is justified or not and an interference with the same if the said order is made without jurisdiction and it may itself correct the error. Relevant portion of the observation of the Apex Court in paragraph 6 of Baby (supra) and paragraph 14 of Investment Corp'n. of India Ltd. (supra) are quoted below respectively:

6. But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact had been arrived at by non-consideration of the relevant and materials documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision u/s 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the tribunals. We do not, therefore, interfere under Article 136 of the Constitution of India. The appeals fails and are dismissed.

*** ** 14. The High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that the High Court was considered the merits of the case. The objection of the High Court was two fold: 1) the Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog." Criticism of the High Court appears to be correct on that account. The judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that the High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in a vacuum.

25. By this time it settled that High Court has power to disturb the findings of fact, it has the power to correct the jurisdictional error of a Tribunal and Court, exercising its supervisory power when said Tribunal and Court acted beyond the parameters of the scheme of Act, as the powers of judicial review of High Court under Article 227 are very wide and it empowers the High Court to ensure that the Courts and Tribunals, inferior to the High Court discharged their duties and obligation in accordance with the jurisdiction vested on it. Recently the Apex Court in the case of Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Others, expressed its earlier views. Relevant paragraph 25 of Sriram Industrial Enterprises Ltd. (supra) is quoted below for better appreciation.

25.?In any event, the powers of judicial review of the High Court under Article 227 are very wide and it empowered the High Court to ensure that the courts

and tribunals, inferior to the High Court, discharged their duties and obligations.

If the bonafide act of accident occurred due to use of motor vehicle causes injury or death, then he/his legal heirs be allowed compensation by the owner of the vehicle involved in the accident or under the Insurance Act to whom the said vehicle is insured and not for each and every injury or death simplicitor. Aclaimant is also under obligation to prove that he was injured or his relation died due to an accident arising out of use of motor vehicle. Unless he proves the same and the Tribunal is satisfied that the injury/death caused is due to an accident of motor vehicle, then only the Tribunal has the power to adjudicate the matter under the M.V. Act. Unless the same is proved/established, the Tribunal has no power to pass any award exercising his jurisdiction either u/s 140 or u/s 166 of the M.V. Act as that would be perverse or nullity and beyond its jurisdiction.

26. In view of the decision of the Supreme Court and decisions of various High Courts a reasonable person can easily come to a conclusion that the framers of the Constitution had conferred unfettered powers to every High Court of the country by way of inserting Articles-226, 227 and 228, without making them subject to any law to be made by the appropriate legislature, and had put these Articles beyond the legislative reach of the Parliament and the State legislatures with the result that the jurisdiction conferred by the aforesaid Articles can only be curtailed or executed with respect to any matter by constitutional amendment and not by any other ordinary legislation and/or in other way whatever may be the mode. Now, if the aforesaid Articles can be considered as a part of the basic feature of the Constitution that cannot also be amended even by the Parliament. The reason behind is that framers of the Constitution considered that the people/citizens of the nation be armed with certain powers to seek justice and for that purpose the Constitution vested the High Courts with wider power of judicial review under Article 226 and power of judicial supervision and superintendence under Article 227 which enables that Court to act suo motu in the interest of justice. As the power is directly derived from the Constitution, which is the basic source and mother of all laws and statutes in the republic, the power given to High Court is sacred duty on it so as to enable to administer justice to the citizen(s) without any compromise. Such power is given to the people to get proper justice from the High Court in appropriate cases. In the case of *Sadhana Lodh* (supra) it is nowhere stated by the Apex Court that High Court has no power to exercise under Article 226 and/or Article 227, in a given case where no other remedy is available to a litigant citizen rather the Apex Court said that High Court can exercise its power against the order of Tribunal in a case of motor accident under Article 227, but not under Article 226 as there being provision for appeal, though limited by the insurer against the award passed by the MACT, within the parameter of Section 149. As the MV Act prescribes provisions for appeal on limited grounds, it would be the duty of a Court to exercise its power of judicial review/ supervisory and superintendence under Article 227 in addition to the power vested on it by the MV Act for the interest of justice so that a

citizen or even an Insurance Co. may not feel that under the Constitution they are remediless. In the instant case, as it is admitted from the facts that the husband and son of the appellant Nos. 1 and 2 in W.A. No. 66 of 2000 and the husband in the W.A. No. 67 of 2000 died/killed not because of use of motor vehicle, but killed by extremists after kidnapping them from the alleged vehicle insured to the Insurer-respondent herein. On the basis of such facts only the Tribunal awarded compensation of Rs. 50,000/- u/s 140 of the MV Act, i.e. no fault liability, meaning thereby that Tribunal passed the aforesaid award beyond the jurisdiction and hence the said award is fully perverse and or nullity in the eye of law. It is also, by this time, settled by the Apex Court that when an order is passed by the Tribunal having no jurisdiction and if the order/award of such Tribunal is a complete perversity or nullity in the eye of law and if the award has been passed beyond the scheme/object of the statute and contrary to the provisions of law, the same can be interfered with by the superior Court of the Tribunal, like High Court in exercise of its supervisory power under Article 227 of the Constitution since the Tribunal is a civil court subordinate to High Court in view of the Apex Court decision rendered in Bhagawati Devi and Ors. v. I.S. Goel and Ors. reported in 1983 ACJ 123, relevant portion of which is quoted below:

In view of the observations of this Court in State of Haryana v. Darshana Devi, we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court for the purposes of Section 25 of the Code of Civil Procedure?.

27. Accordingly, the argument of Mr. Soumik Deb on point No. 1, though appears to be forceful, cannot be accepted for the reasons stated above. Hence, the answer to point No. 1 is negative.

28. As we have discussed above that in Sadhana Lodh (supra) nowhere stated that High Court is totally prohibited from exercising its plenary jurisdiction or superintendence/supervisory powers vested on it under Article 226 of the Constitution, rather paragraph 6 of the decision in the case of Sadhana Lodh (supra) the Apex Court held that the supervisory jurisdiction on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record meaning thereby that High Court has the power under Article 227 to see the perversity in an award passed by a tribunal in a matter of accident claim under Article 227 of the Constitution and in the case of Bijoy Kumar Dugar, the Apex Court did not say anything new, rather reiterated/ followed the principles laid down by the Apex Court in SadhanaLodh (supra). Therefore, according to us there is no quarrel with the proposition laid down by the Apex Court in Sadhana Lodh and Bijoy Kumar Dugar (supra).

29. We have no hesitation also to say that power of judicial supervision and superintendence on the decision of the subordinate Courts always are remained with the High Court, that, of course, has to be exercised sparingly with certain self restriction only in the case where the tribunal and subordinate courts

proceeded beyond the parameter of the scheme/object and passed an order/award which is fully perverse, nullity and beyond its jurisdiction, which suffers from coram non judice.

Hence, the answer to Point No. 2, as raised by Mr. Deb, also fails.

30. Now, regarding the Point No. 3, as raised by Mr. Deb, we have considered all the decisions stated by him as well as the decision referred to by Mr. Gautam, learned Counsel for the Insurance Company and there is no quarrel with the proposition laid down by the Apex Court in these cases. Even in those cases, the Apex Court also held that judgment of a learned single Judge passed under Article 226 can be assailed as intra Court appeal, i.e. Writ Appeal, if the concerned High Court Rules permits, but the judgment and order passed by a learned single in exercise of the power under Article 227 is not appealable as intra court appeal/writ appeal before the same as the learned Single Judge exercised the power of judicial supervision and superintendence of that High Court.

31. In the case of *Sivaji Saha v. Md. Farici* reported in 2005 (1) GLT 289 : (2005) 2 GLR 435 a Division Bench of this Court, considering the decision of *Sukhendu Bikash Barua v. Harekrishna De* AIR 1953 Cal 11, held no letters patent appeal lies against an order passed by a Judge under Article 227 of the Constitution of India and the decision of the Apex Court in *RDCCB v. Dinkar* (1993) 1 SCC 9 and *Susila Bai v. Nihalchand* 1993 1 SCC 11.

31.1 A Division Bench of this Court in the case of *Nirmala Debnath and Anr. v. The New India Assurance Company Ltd. and Ors.* passed in W.A. No. 01 of 2001 : (2006) 3 GLT 660, also held that an order passed by a learned single Judge exercising power vested on him under Article 227 of the Constitution, an LPA/Writ appeal is not maintainable, in which one of us (R.B. Misra, J.) was a party. Therefore, in view of the apex court decisions and decision of this High Court we have no hesitation to hold that a judgment and order passed by a single Judge of the High Court exercising power under Article 227 is not appellable by an LPA/intra Court appeal/Writ appeal.

32. Now, question remains for us is to see whether the impugned petition filed by the respondent insurance company on which learned single Judge passed an order after hearing the parties falls under Article 226 or under Article 227 or both and as to whether the learned single Judge exercised his power vested on High Court under Articles 226/227 after proper scrutiny of the petition as filed by the Insurance Company and the impugned judgments, we are of the firm opinion that the respondents-Insurance Company filed the two petitions under Articles 227 of the Constitution and the learned single Judge also exercised the power of judicial supervision and superintendence vested on High Court under Article 227 of the Constitution. Hence, the same is not appellable as the appeal is not appellable one; we are of the firm opinion that the respondent, Insurance Company filed two petitions under Article 227 of the Constitution for correcting

the award passed by the Tribunal beyond jurisdiction under Article 227 of the Constitution and the learned single Judge also exercised the said power of Article 227 vested on High Court while passing the impugned judgment. Hence, against the impugned judgment and order of the learned single Judge passed under Article 227, an intra Court appeal/Writ appeal, as preferred, not maintainable in view of the decisions of the Apex Court as well as of this Court. As the appeals preferred by the claimant appellants are not maintainable having no jurisdiction, we are not in a position to decide whether the impugned judgment and order of the learned single Judge is correct or not as this also suffers from the doctrine of coram non judice. Hence, we are not deciding the instant appeals on merit, but dismissing the same on the ground of maintainability

No order as to costs.